

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 406

SPONSOR: Governmental Oversight & Productivity Committee and Senator Margolis

SUBJECT: Corporate Income Tax Credit for Contributions to Nonprofit Cultural Organizations

DATE: March 11, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute allows a credit of 50 percent of the amount of an eligible contribution to an eligible cultural organization, which contribution is in the amount of \$60,000 or more, against any tax due for a taxable year under ch. 220, F.S., the Income Tax Code. The credit is inapplicable to a particular corporation after the aggregate amount of the contributions to such organizations given by the corporation in any one taxable year exceeds \$600,000.

Additionally, the committee substitute permits a credit of 50 percent of the amount of an eligible contribution to the cultural institutions trust fund.

This bill amends sections 220.02 and 220.13 of the Florida Statutes.

This bill creates sections 220.192 and 220.1921 of the Florida Statutes.

II. Present Situation:

Chapter 220, F.S., is the Florida Income Tax Code. The stated purpose of the code is “. . . to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners.”

The Department of Revenue (DOR)¹ is the entity responsible for implementing the provisions of the code. The DOR is headed by the Governor and Cabinet.

¹ The Department of Revenue is created in s. 20.21, F.S.

The Department of State,² Division of Cultural Affairs, promotes programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State is known as “Florida’s Chief Cultural Officer.” Pursuant to s. 265.2862, F.S., the Division of Cultural Affairs is required to develop and conduct a general support program designed to supplement the financial support of cultural organizations that have a sustained commitment to cultural excellence and to recognize organizations for superior cultural contributions that have regional or statewide impact.

A Cultural Institutions Program is created in the Department of State by s. 265.2861(2), F.S. The Division of Cultural Affairs is required to establish by rule criteria for the award of grants to cultural organizations, including criteria relating to program quality, potential public exposure and benefit, fiscal stability, ability to properly administer grant funds, procedures for peer evaluation, and other matters deemed necessary and appropriate to further cultural institutions in the state.

Additionally, under s. 265.2862, F.S., the Division of Cultural Affairs is required to develop and conduct a general support program designed to supplement the financial support of cultural organizations that have a sustained commitment to cultural excellence and to recognize organizations for superior cultural contributions that have regional or statewide impact. The division is required to adopt by rule criteria for awarding grants to cultural organizations.

A Cultural Institutions Trust Fund is created in s. 265.2861(1), F.S. The trust fund was created to support the Cultural Institutions Program and was later amended to also include support for the following:

- < Statewide arts grants.
- < Arts in education and visiting arts programs.
- < The State Touring Program.
- < Local arts agencies or state service organizations.

The trust fund consists of moneys appropriated by the Legislature and moneys contributed to the fund from any other source. Upon appropriation by the Legislature of funds for the Cultural Institutions Program, the department is required to execute a contract with each organization that contains specified statutory information. An annual report detailing the expenditure of funds must be submitted to the department and recipients may be audited. Annual post-audits or independent attestation of financial accounts conducted by an independent certified accountant is required.

Chapter 120, F.S., the Administrative Procedure Act, establishes the process by which agencies adopt rules to implement delegations of statutory authority. Section 120.52(15), F.S., defines “rule” to mean

. . . each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency

² The Department of State is created in s. 20.10, F.S.

and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. . . .³

Section 120.536, F.S., establishes limits on agency rulemaking power. That section states:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statutes. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

Further, under s. 120.54, F.S., rulemaking is not a matter of agency discretion. Each agency that meets the definition of a "rule" must be adopted as soon as feasible and practicable. Exceptions are authorized, but generally, pursuant to paragraph (1)(b) of the section, whenever an action requires rulemaking, rules must be drafted and formally proposed within 180 days after the effective date of the act, unless the implementing legislation provides otherwise.

A similar corporate income tax credit is provided in s. 220.183, F.S., the community contribution tax credit program. Under that program, corporations, insurance companies, and persons who collect or remit sales or use taxes may be able to receive tax credits for making donations to certain low-income housing and community development projects. Available tax credits under the program may be taken against sales or use taxes, corporate income taxes, and insurance premium taxes.⁴ Tax credits are limited to 50 percent of the amount of a "community contribution" or donation to a maximum of \$200,000 annually per donor.⁵ The total amount of community contribution tax credits available per year under the program is \$10 million.⁶ Tax credits against sales or use taxes are granted as a refund against sales and use taxes reported on returns and remitted in the 12 months preceding the application to the Department of Revenue for a refund.⁷ Tax credits against corporate income taxes and insurance premium taxes are claimed against taxes due.⁸

³ A number of exceptions are also contained in the definition, including internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum; legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with agency actions; and the preparation or modification of agency budgets, among other items.

⁴ Sections 212.08(5)(q), 220.183, and 624.5105, F.S.

⁵ Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.

⁶ Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.

⁷ Section 212.08(5)(q)1.b., F.S.

⁸ Sections 220.183(1)(a) and 624.5105(1)(a), F.S.

III. Effect of Proposed Changes:

The bill states that the purpose of the section is to encourage private, voluntary contributions to organizations that promote cultural activities, either by encouraging the talents of creative individuals or by helping to provide an audience for cultural activities.

A definitional section is provided. Definitions are provided for:

“Cultural” means the disciplines of dance, music, theater, visual arts, literature, media arts, interdisciplinary and multidisciplinary, and programs of museums.

“Eligible contribution” means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible cultural organization.

“Eligible cultural organization” means a nonprofit cultural organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is engaged in cultural activities. This also includes educational institutions that are also presenters or producers of cultural activities.

The bill allows a credit of 50 percent of the amount of an eligible contribution, which contribution is in the amount of \$60,000 or more, against any tax due for a taxable year under the chapter. The credit is inapplicable to a particular corporation after the aggregate amount of the contributions to such organizations given by the corporation in any one taxable year exceeds \$600,000.

A credit may be taken on a consolidated return basis if the taxpayer files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1), F.S.

The bill prohibits carrying forward to the following year any unused credit granted by the section. Further, the section prohibits conveyance, assignment, or transfer of the credit to another entity unless all of the assets of the taxpayer are so transferred.

The bill establishes that a tax credit pursuant to the section is to be applied for on a form established by the DOR. Rulemaking authority is granted to the DOR to implement the section.

The DOR and the Division of Cultural Affairs are required to develop a cooperative agreement to assist in the administration of the section.

The Division of Cultural Affairs is directed to adopt rules necessary to determine the eligibility of nonprofit cultural organizations.

Additionally, the committee substitute permits a credit of 50 percent of a contribution made to the Division of Cultural Affairs of the Department of State for deposit into the Cultural Institutions Trust Fund against any tax due for a taxable year. A credit that is not fully used in any one year may not be carried forward to another year. Further, a credit may not be conveyed, assigned, or transferred unless all of the assets of the corporation are so conveyed, assigned, or transferred.

Proposals for the granting of the tax credit require prior approval of the Division of Cultural Affairs. A business must submit an application for tax credit to the division on a form adopted by rule. Approval must be granted in writing and must state the maximum credit allowable to the firm. A copy of approval must be transmitted to the executive director of the Department of Revenue. Both the Department of State and the Department of Revenue are authorized to adopt rules to implement the authority delegated by the section.

The bill also amends s. 220.02(8), F.S., to add the newly-created tax credit to the list which establishes the order in which tax credits are applied. The bill also amends s. 220.13(1), F.S., to include these tax credits in the definition of “adjusted federal income” regarding those additions that must be added to taxable income.

The section has an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The committee substitute permits tax credits for corporations that make contributions directly to an eligible institution or to the cultural institutions trust fund.

B. Private Sector Impact:

Those entities that make contributions directly to eligible organizations in the amount of \$60,000 up to \$600,000 will receive a corporate income tax credit of 50 percent of the eligible contribution.

Those entities that make contributions directly to the cultural institutions trust fund may receive a corporate income tax credit of 50 percent of the eligible contribution. The committee substitute does not contain a limitation on the amount of that contribution.

C. Government Sector Impact:

The tax credit will reduce the base on which corporate taxes for entities that make contributions to eligible organizations are calculated, though the potential financial impact is yet undetermined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The credit is “inapplicable” to a particular corporation after the aggregate amount of the contributions to such organizations given by the corporation in any one taxable year exceeds \$600,000. Instead of providing that the credit is inapplicable, it may be appropriate to state that the tax credit is capped at \$600,000.

In the community contribution tax credit, proposals for granting the tax credit require the prior approval of the Office of Tourism, Trade, and Economic Development. Further, the total amount of tax credit which may be granted for all programs approved under that program is \$10 million annually. This bill contains no prior approval requirement and establishes no limitation on annual totals for credits. The community contribution tax credit program, unlike the one established by this bill, permits a carrying forward of unused credits for up to five years.

The bill does not appear to be limited to contributions to Florida cultural organizations as the definition of “eligible cultural organization” means a nonprofit cultural organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code.

VIII. Amendments:

None.